1947. File No. Laq II/47

Legal DEPARTMENT

B BRANCH

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Subject:— Rules and Notifications under the Land Acquisition Act, 1894

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File No. Laq II/47

Stl. Sectt. Slip 24 B e.

198-B

C O N T E N T S.

Legal Department File No. Leg II/1947.

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2.	G.No. 5400 26-5-47	Section 6 Draft Notification under	5-7.
3.	G.No. 5051 17-5-47	Section 4(1) Whether it would be advisable to issue a fresh notification under ..... and to accept the consequences of the rise of value in the intervening period in respect of 870 acres of land which are not required by society.	9-15.
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5.4.	G.No. 11062 20-11-47	Section 3(c) Notification under	23-25.
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Office of the R.L.A.

A revised draft notification is sent herewith.

2. It is not necessary to refer to section 5B of the Land Acquisition Act, 1894, in the proposed draft notification, because the officer at the time of making an entry under section 3A has to pay or to tender payment for all necessary damage to be done.

Remembrancer of Legal Affairs.

O.R. to R.D., No. 1738, dated the 20th February, 1947.

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Revenue Department,

Bombay Castle, February, 47.

Land Acquisition Act, 1894.

Notification.

No. 0/62462. In exercise of the powers conferred by section 5A of the Land Acquisition Act, 1894 (I of 1894) in its application to the Province of Bombay, the Govt. of Bombay is pleased to authorise the General Manager, Great Indian Peninsula Railway, for the purposes of the said section, in respect of the area comprised within the West Khandesh and Nasik districts for the proposed Manmad-Nardhana Railway.

By order of the Governor of Bombay,

Secretary to Government.

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NOTIFICATION

Revenue Department,

Bombay, Castle, May, 1947.

Land Acquisition Act, 1894.

No. 46/39/18512. - Whereas by Government Notification in the Revenue Department, No. ..... dated ..... it was notified under section 6 of the Land Acquisition Act, 1894 (I of 1894) that the land/lands specified in Schedule A hereto is/are needed for the public purpose/company stated in the said notification viz. for —

And whereas the acquisition of the said land/lands is urgently necessary.

Now, therefore, the Government of Bombay is pleased to direct under sub-section (1) of section 17 of the said Act that the Collector may, on the expiration of fifteen days from the publication of the notice relating to the said land/lands under sub-section (1) of section 9 of the said Act, take possession of all the waste or arable lands specified in Schedule B hereto.

A plan of the land/lands can be inspected at the office of ~~of the~~ @ ——————————

@ to be filled in by R.D.

Schedule A.

Village	Survey No.	Approximate area of the land/lands
(To be filled in by R.D.)		

Schedule B.

Village.	Survey No.	Approximate area of the waste and arable land.
(To be filled in by R.D.)		

By the order of the Governor of Bombay.

Secretary to Government.

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Office of the R.L.A.

In place of the proposed Revenue Draft notification at page 3 a revised draft thereof is sent herewith. The Revenue Department should satisfy that before it is issued the notice under sub-section (1) of section 9 in respect of the ~~land~~ lands needed for a public purpose or for a company, is duly published.

Encumbrance of Legal Affairs.

U. R. to R. D., No. 5406, dated the 20th May, 1947.

Office of the R.L.A.

On the 22nd of October 1946 Government issued a notification under section 4 (1) of the Land acquisition Act, 1894, the material part of which reads as follows:-

> "Whereas it appears to the Government of Bombay that the lands specified in the schedule hereto are likely to be needed for the purposes of the Ahmedabad Education Society viz. for a University, Engineering College buildings etc. It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (I of 1894), that the said lands are likely to be needed for the purpose specified above."

Paragraph 5 of the notification states that if Government is satisfied that the said lands are needed for the aforesaid purpose, a final notification to that effect under section 6 as of the said Act will be published in the Bombay Government Gazette, in due course, and that if the acquisition is in part or wholly abandoned, the fact will be duly notified in Bombay Government Gazette. The Schedule describes lands measuring about 445 acres. It is now transpires that as a matter of fact lands measuring about 175 acres are needed by the Ahmedabad Education Society for the following purposes:-

(1) Pharmaceutical College	50 acres
(2) Textile Technology Institute	100 acres
(3) Teachers' Training College.	25 acres.
	175 acres.

It does not appear to be the intention of Government that the University area should be in the name of the Society as the University itself will be a statutory body. Similarly, the Engineering College and the R.C. Technical Institute are Government institutions. The lands required for the University the Engineering College and the R. C. Technical Institute measure about 270 acres. This area is apparently required by Government for the above mentioned educational purposes.

3. It is now felt that there will be some difficulty if it is decided that 175 acres should be acquired for the Society and that the balance of 270 acres should be acquired by Government since the notification under section 4 states that the lands are likely to be needed for the purposes of the Ahmeda-

bad Education Society. It is thought possible to issue a n notification under section 6 for the 175acres only and to issue a separate notification under section 4 for the 270 acres. As, however, the market value would date in respect of this la ter area from the date of the new notification, and as land values are likely to have risen considerably in the interval, it is thought desirable that the original notification should be fas as possible be maintained. In a ny case, it is t ought necessary to ~~[illegible]~~ ensure that the proceedings are legal, as otherwise it might be necessary to renotify under section 4 at a later date when values might soar even higher. The question, therefore, referred to the R.L.A. for advice in consultation with the Advocate General.

3. There is no manner of doubt t at if a fresh notification under section 4(1) were to be issued, the values of the lands would have to be determined as on the date of the second notification which would supersede the first notification.

4. The question, t erefore, arises whether a fresh notification under section 4(1) is necessary for the validity of the acquisition proce dings. The notification already issued announces that the lands are likely to be needed for the purposes of the Ahmedabad Education Society. There is no difficultyin law in abandoning part of the area so notified an to issue a declaration under section 6 in respect of the 175 acres only as needed for the purposes of the Ahmedabad Education Society. The identity of the property acquired is determined only on the declaration under section 6 being made, and it is not necessary that the propery acquired should include all the property appearing in the notification under section 4; province as bind v. Harkishandas I.L.R. 1940 Kamani p. 320 at p.402. To that extent, a fresh notification under section 4(1) would not be necessary.

5. The real difficultyis in respect of the remaining 270 acres which, it must now be assumed, are not needed for the Society. The Society is presumable registered under the Societies Registra tion Act, 1860, and would, therefore, be included in the expression "Company"; section (3) (e). The

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Act apparently makes a distinction between an acquisition for a public purpose and an acquisition ofr a Company, although one of the conditions on which the Act can be applied is that the work for which the land is required is such as is likely to prove useful to t e public: section 40(1)(b). It is true that section 4 does not insist, as section 6 does, that the preliminary notification should make it clear whether the land is likely to be needed fo r a Company as distinguished from a public purpose. It seems that the words"for a Company" have not been added by the Legislature in section 4 although section 5-A enacted in 1933 would suggest that they should have been so added. However, Government in fact notified the land as required for the Ahmedabad Education Society. It has bit so far been decided that the purpose notified under section 4 must remain substantially the same throug out the proceedings. That question was left open by our High Court in the case of Perebotta Cethalal Sone and Ors. v. Secy. of State A.I.R. 1938 Bombay p. 148. But it might conceivably be argued that the change of purpose, that is, from the purpose of a Company to a public purpose to be financed out of Government revenues, is a sufficiently important change which can be said to have affected the right of the objectors to notify their objections under section 5-A. Moreover, to mention in ~~the~~ the declaration under section 6 that the lands are needed partly for a Company and partly for a public purpose, when the preliminary notification described them as needed exclusively for the purpose of the Company, would be open to the grave objection, that although the lands are needed for public purposes, there was in fact no. preliminary notificati n under section 4 in that behalf. The circumstance that the particular purposes (the University and the Engineering College Building etc,) did figure in the notification under section 4 would not be of assistance inasmuch as they were explanatory of the phrase for the purposes of the Ahmedabad Education Society. This is likely to be treated as a substantial

defect in form; and it might be successfully urged that in respect of the 270 acres the earlier stages prescribed by law have not been gone through viz., a notification under section 4, and that, therefore, there was no scope for hitfging objections under section 5-A. Prejudice to the owners of the lands may thus be proved, and the declaration under section 6 would also cease to be conclusive. See the discussion in the converse case of Ra Radha Swami Satsang Sabha v. Tara Chand, A.I.R. 1969 Allahabad 557. It would seem therefore, that it may not be legally feasible to set out with particularity the two different purposes in the declaration under section 6 maintaining at the same time the notification under section 4 and without issuing anoth r notification under that section in respect of the 270 acres of land.

6. On the other hand, if the declaration under section 6 is issued in the same terms as the notification under section 4, we might be faced with this difficulty that the Society not having decided to secure the 270 acres of land, it would be open to the Courts to inquire into the validity of the steps which led up to the declaration under section 6 in their name; see In re Manick Chand Mamata 48 Calcutta 916. If the declaration says that the land is required for a Company whereas in fact it is admittedly required in substantial part by Government for public purposes, the declaration would not be conclusive of what it states. The declaration under section 6 cannot be made unless the Society executes the agreement, which apparently the Society will not do in this case in respect of the 270 acres.

7. I am, therefore, inclined to think that in respect of the 270 acres it would be advisable to issue a fresh notification under section 4(1) and to accept the consequences of the rise of values in the intervening period. The declaration under section 6 m may then be narrowed down to the 175 acres required

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by the Society.

6. As the question of some importance, and may involve a substantial amount the Advocate General is requested to give his opinion.

Remembrancer of Legal Affairs.

U.H. to Advocate General, No. 5-61,

dated the 17th May 1967.

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NOTIFICATION

Revenue Department,

Bombay Castle,

April, 1947.

Land Acquisition Act, 1894.

No. 3151/46— In exercise of the powers conferred by section 4 of the Land Acquisition Act, (I of 1894), the Government of Bombay is pleased to amend Government Notification, Revenue Department, No. 3151/46, dated the 2nd January, 1947 as follows, namely:-

In the preamble to the said notification, the words and letters "viz. for establishment of a College" shall be deleted.

By order of the Governor of Bombay,

Secretary to Government.

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Office of the R.L.A.

Government issued the notification No. 3153/45 dated 2nd January, 1947 under section 4 of the Land Acquisition Act, 1894, in the following terms:-

> "Whereas it appears to the Government of Bombay that the lands specified in the schedule hereto are likely to needed for the purposes of the Maharashtra University, viz. for establishment of a College. It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894(I of 1894), that the said lands are likely to be needed for the purpose specified above."

It is now proposed by a corrigendum to delete "viz. for establishment of a College," and the R.L.A. is requested to advise whether this procedure would be in order.

2. If a corrigendum is issued, it is likely to be construed as a fresh notification superseding the existing notification in which case the valuationof theland will have to be assessed on the basis of the market value thereof on the date of the fresh notification. The difficulty has arisen, because, in adopting the model Form C at p. 86 of the Manual of Land Acquisition, instead of retaining the words "a public purpose" and then specifying the purpose, namely, the Maharashtra University, the words "Maharashtra University" were substituted for the words "a public purpose and were particularized by the words "for establishment of a College which was really an unnecessary and almost meaningless particularization. The words "Maharashtra University" needed no explanation. The videlicet (viz.) means "that is to say," and in judicial interpretation the expression "that is to say" is generally treated as restrictive or limitative and not merely illustrative. There would, however, be no objection while issuing a declaration under section 6 to drop the words "viz." for establishment of a college;" for, their main purpose, namely, the Maharashtra University would still remain, and it can hardly be urged that there was a change of purpose. As the University is expected to be a teaching University, the establishment of colleges would be included in its objects. Once the land is acquired for the Maha-

centre University, it can be used for any other legal purpose connected with the University or even for any other public purpose.

3. On the whole, I am inclined to think that it is unnecessary to issue a corrigendum at this stage, and that the better course would be to drop the words "viz. for establishment of a College" while making a declaration under section 6.

4. A similar question, though of a slightly different nature but involving common points, has arisen in respect of the University at Ahmedabad, and it is being referred to the Advocate General for opinion. I would, therefore suggest that this case too be similarly referred to him.

Remembrancer of Legal Affairs.

U. R. to Advocate General, No. 5052.

dated the 17th May, 1947.

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Office of the R. I. A.

The draft notifications at pages 61-63 as formally amended are in order. In place of the draft notifications at pages 57-59 ante a revised draft notifications is sent herewith.

3. In view of the definition of land in section 3 (e) of the Land Acquisition Act, 1894, the draft notification at page 61 ante will include the building standing on the land. On acquisition of the land it will be lawful for Government to take possession of the building standing thereon.

Remembrancer of Legal Affairs.

U. R. to R. D., No. 8875,
dated the 1st September, 1947.

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Notification.

Revenue Department,

Bombay Castle, August, 1947.

No. - Government Notification in the Revenue Department No. 4894/45 and No. 4894/45(a), dated the 8th July, 1947 are hereby cancelled.

By order of the Governor of Bombay,

Secretary to Government.

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Office of the R. L. A.

A revised draft notification is sent herewith. It is presumed the Special Land Acquisition Officer, Kaira District will exercise his functions under the Land Acquisition Act, 1894, in the districts of Kaira and Ahmedabad.

Remembrancer of Legal Affairs.

G. R. to R. D., No. 11062,
dated the 20th November, 1947.

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NOTIFICATION

Revenue Department,

Bombay Castle, November, 1947.

Land Acquisition Act, 1894.

No. - In exercise of the powers conferred by clause (c) of section 3 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to appoint the Special Land Acquisition Officer, Kaira Districts to perform the functions of a Collector under the said Act within the limits of the Kaira and Ahmedabad districts.

By order of the Governor of Bombay,

Under Secretary to Government.

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A. C.

Office of the R.I.A.

revised draft erratum is appended,

Remembrancer of Legal Affairs.

U. R. to R. D., No. 15188,
dated the 30th December, 1947.

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Revenue Department,

Bombay Castle, December, 1947.

Erretum.

No. 5772/45.- As certain parts of the areas of S. Nos. 10, 17, 36, (Part), 63 (Part), 66, 67, 68, 94 (Part), and 95(Part) of village Dapkhel, taluka Haveli, Poona District, specified in the Schedule appended to each of the Government Notifications in the Revenue Department, No. 5772/45, dated the 6th September, 1947 and No. 5772/45, dated the 7th September 1947, published at pages 3630, 3631, 3632, and 3633 of Part I of the Bombay Government Gazette, Extraordinary, dated the 6th and 7th September 1947, respectively, belong to and already vest in Government, the following corrections should be made in the said Government Notifications, namely:-

For the entries in respect of the following survey numbers in columns 3 and 4 of the Schedule to the each of the said notifications, namely:-

(Here insert A - A on page 81),

substitute the following entries respectively, namely:-

(Here insert B - B on page 81),

By order of the Governor of Bombay,

Secretary to Government.

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Office of the R.L.A.

In forwarding the draft of the proposed notification at p. 173 ante, the Under Secretary, R. D. observes:

> "I do not know whether the proper course is to renotify the lands and then authorise the Additional Special Land Acquisition Officer to exercise the powers or issue the proposed notification."

The date of the notification under section 4(1) is the material date for determining t e market value of the lands to be acquired. The notification under section 4(1) remains unaffected in this case, and the defective procedure would not affect t.e valuation of the land. There is thus no need to renotify the lands.

2. The proper course is to amend the notification R.D. No. 10109/39 dated the 1st August, 1945, by substituting the words "the Additional Special Land Acquisition Officer, Ahmedabad, " for the words "the Special Land Acquisition Officer, Ahmedabad," in the operative part. A suitable draft notification is sent herewith.

3. The notification No. 10109/39, dated the 1st August 1945, shows that the Collector had been directed under section 17 (1) of the Land Acquisition Act, 1894 to take possession of all the waste or arable lands specified in the Government notification a fore mentioned. It is not known whether the Additional Special Land Acquisition Officer, Ahemedabad in his capacity as Collector took pos.esaion in pursuance of this direction or whether the possession was taken by the Collector himself. If all the proceedings subsequent to taking order under s ction 7 have been done by the Additional Special Land Acquisition Officer, that would include the notice under section 9(1) and consequently the notice under section 17(1), if taken by the Additional Special Land Acquisition Officer, would be equally void. This aspect position may be got verified, and if necessary,

the officer now notified as Collector may be asked to take all the steps de novo from section 7 onwards.

Remembrancer of Legal Affairs.

U. R. to R. D., No. 15338,
dated the 23rd December, 1947.

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NOTIFICATION

Revenue Department,

Bombay Castle, December, 1947.

Land Acquisition Acts, 1894.

No. 10109/39 - In exercise of the powers conferred by clause (c) of section 3 and section 7 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to amend Government Notification in the Revenue Department, No. 10109/39, dated the 1st August, 1946, as follows, namely:-

For the words "The Special Land Acquisition Officer, Ahmedabad," where they occur for the first time the words "The Additional Special Land Acquisition Officer, Ahmedabad." shall be substituted.

By order of the Governor of Bombay,

Under Secretary to Government.

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